



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201204017**
Release Date: 1/27/2012

Date: November 2, 2011

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.04-07; 528.05-00

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(4). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: September 13, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Date
D = Declarant

UIL:

501.04-07
528.05-00

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below.

Issue

Do you qualify for tax exemption under section 501(c)(4) of the Internal Revenue Code? No, for the reasons stated below.

Facts

You submitted a Declaration and Bylaws in lieu of incorporating with the state. Your Declaration was adopted on B. Your declaration establishes you as a condominium association and sets forth the rules and regulations relating to owning a condominium within the association.

Your community consists of 12 condominiums in addition to the common areas and all units are currently occupied. Membership is comprised of your Declarant and all owners holding title to a condominium. Each member shall be entitled to one vote for each condominium owned.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

Article III Section 1 of your Declaration states ownership of each condominium within the development shall include a unit, the respective interests in the common areas as specified in Exhibit B, and any exclusive easements or easements appurtenant to such units over the common area as described in the deed thereto or in the condominium plan, if any. Each owner shall have an equal pro rata ownership interest share in the common areas. Per Exhibit B, the respective interest in the common area to be conveyed with each unit comprises an undivided 1/12 interest therein.

You submitted Form 1024, application for exemption, which indicates you will maintain the common areas of the individual properties for the benefits of all rightful owners. The primary functions include gardening and landscaping of common areas, maintenance of driveways, exterior buildings and parking areas, maintain leak proof roofs and control the usage of common areas per city codes and association rules. Your Declaration indicates the term "Common Area" shall mean the entire development, excepting all units therein granted or reserved, subject to all easements and rights of use described herein and in the documents of conveyance through which each owner acquires his condominium. The "Declarant" shall mean D and has the right to enter upon the development for purposes of construction of the development and for purposes of making repairs and remedying construction defects.

According to additional information you submitted, you enforce covenants with regard to repair and maintenance of the common areas, including parking lots, roadways and landscaping. In addition to maintaining the common areas, you will provide roof and structure maintenance on your two complex buildings that comprise your development of 12 condominiums. Article III Section 3 of your Declaration states that each owner will be responsible for interior and exterior maintenance. However, the association shall clean and maintain exclusive easements appurtenant to any of the units over the common area. You indicated that there is no guest parking within your association and owners will maintain their own garage.

You indicated that a distribution of proceeds or property in the event of a partition and to the extent permitted by law will be distributed to and among the respective owners and their proportion as his or her proportionate share of total market value of all condominiums in the development based on a qualified appraisal.

You will have the power to establish, fix and levy assessments against the ownership of condominiums and to enforce payment of such assessments. You have also indicated you may have special assessments including, but not limited to, unanticipated delinquencies, the cost of construction or reconstruction, unexpected repairs or replacement of capital improvements upon the common areas. Your board may, in its discretion levy such assessments against each condominium.

Organizational activities will be funded solely through membership assessments. Each condominium owner will be assessed equally for the fees and maintenance of the common areas. All expenses will be used for the purposes set forth in the organization's Bylaws and Declaration of Protective Covenants, including maintenance, repairs and other alterations on your common area and condominium development.

Law

Section 501(c)(4) of the Code provides in part, that civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare qualify for recognition of exemption.

Section 1.501(c)(4) -1(a)(2)(i) of the Income Tax Regulations provides in part, that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about betterments and social improvements....

Rev. Rul. 69-280, 1969-1 C.B. 152. 218.149, a nonprofit organization formed to provide maintenance of exterior walls and roofs of homes of members who own houses in a housing development is not exempt as a social welfare organization. Distinguished by Rev. Rul. 72-102. §1.501(c)(4)-1. (Sec. 501, '86 Code.)

In Revenue Ruling 72-102, 1972-1 CB 149, an organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks and common areas for use of the residents in the development. The organization was determined to qualify for exemption under section 501(c)(4) of the Internal Revenue Code because by administering and enforcing covenants, and owning and maintaining certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments, the organization is serving the common good and the general welfare of the people of the entire development.

Rev. Rul. 74-17, 1974-1 C.B. 130, describes an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project, as defined by State statute, with membership assessments paid by the unit owners does not qualify for exemption.

Revenue Ruling 74-99, 1974-1 C.B. 131 lists the three criteria a homeowners' association must meet in order to qualify for exemption under section 501(c)(4) of the Code. The homeowners' association:

1. must not conduct activities directed to the exterior maintenance of private residences;
2. it must serve a "community " which bears a reasonable recognizable relationship to an area ordinarily identified as governmental; and
3. the common area or facilities it owns and maintains must be for the use and enjoyment of the general public

The ruling holds that where an organization's stated purposes are to administer and enforce covenants for preserving the architecture and appearance of a given real estate development, and to own and maintain common green areas, a prima facie presumption expenses that the organization is primarily formed and operated for the individual business or personal benefit of its members and as such does not qualify for exemption under section 501(c)(4).

Application of Law

You are not described in section 501(c)(4) of the Code because you are not operated for the promotion of social welfare. Instead, you are operated for the benefit of your 12 tenants through the operation of a condominium association.

You do not meet the requirements of section 1.501(c)(4) -1(a)(2)(i) of the Income Tax Regulations because your primary purpose is not that of social welfare, but rather for the operation of a condominium association for the benefit of your tenants.

You are similar to the organization described in Revenue Ruling 69-280. Like the organization in this ruling, you will maintain the roofs and exterior walls of your condominium development. Each condominium owner shares pro rata interest in the common areas and has a proportionate collective interest, based on market value. This shows that your activities are geared towards benefitting only the tenants who own the individual condominium units, and not the entire community as a whole.

You are not like the organization described in Revenue Ruling 72-102 because you are not serving a "community" by maintaining streets, sidewalks, and other common areas that are used by the entire community. Also, you may be distinguished because you are not a large housing development. Instead, you have two buildings with only 12 condominium units.

You are identical to the organization described in Revenue Ruling 74-17. Like the organization in this ruling, you were formed by the unit owners of a condominium housing project to provide for the management, maintenance and care of the common areas. Your income is composed of membership assessments enforced by covenants and is primarily used to provide direct economic benefits to these members and the owner of the association by improving the overall development. Any benefits to the larger community are minor and incidental in nature. You only support 12 condominium owners and are not creating benefits to the community at large. Where the benefit from an organization is limited to that organization's members (except for some minor and incidental benefit to the community as a whole), the organization is not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

You do not meet any of the three criteria explained in Revenue Ruling 74-99 that an organization must meet in order to qualify as homeowners' association exempt under section 501(c)(4). You maintain the exterior and roofs of the condominiums that are collectively owned by the tenants which is the same as maintaining private residences. The twelve tenants of the condominiums do not represent a "community." Also, you have not established that the common areas which you maintain are for the use and enjoyment of the general public.

Applicant's Position

You contend that you meet the definition of a homeowners association and are operating within the confines of section 501(c)(4) of the Code. However, you have not supplied any additional information or law to support your position.

Conclusion

Based on the information you have provided, your primary purpose is to maintain the exterior walls and roofs, and other common areas of the condominiums owned by your members. As such, you are not promoting the social welfare of the community or serving any other public purpose described in section 501(c)(4) of the Code. Instead, you are merely serving the private interests of the 12 residents of the condominiums.

Accordingly, you are not exempt from federal income tax under section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about

representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
P.O. Box 2508 Room 7-008
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director of Exempt Organizations

Enclosure, Publication 892

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